(46)

HIGH COURT OF CHHATTISGARH: BILASPUR
S.B. HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J
CIVIL REVISION NO.149/2004

Applicant
Tenant

Suresh Kumar Chauhan
aged about 65 years,
S/o Shri L.B. Chauhan
House No.3(10)
Choudhari - Bada Motipara
Ward No.26,
Durg (CG) (Outer Building)

Vs.

Respondent
Landlord

Nishidhkant Chaudhary,
aged about 60 years,
Retired Director (Electrical)
Mines Security Directorate
Hyderabad (AP)

At present :
C/o Shubhra Nil Choudhary
Flat No.8 A/1
Sharat Co-operative
Housing Society
Kamgar Nagar Road
Kurla (East) Mumbai-24

PRESENT:

Shri V.G Tamaskar, Counsel for the applicant

Shri M.P. S Bhatia, Counsel for the respondent

ORDER

(Passed on 27th September 2005)

This Revision is directed against the order dated 31.07.2004 passed by Rent Controlling Authority (for short, "the Authority"), Durg in Eviction Case No.06/A-90/2003-04,

(87)

whereby allowing the application filed by the non-applicant/ landlord against the applicant/tenant for eviction.

2) Non-applicant Nishidhkant Choudhary and his brother Nitish Choudhary filed a civil suit against the applicant for eviction, arrears of rent and damage on the grounds that the suit house has become unsafe for human habitation, applicant has encroached upon the open land of landlord and without permission has made some construction, and also made some construction and alteration in the suit house. The suit was registered as Civil Suit No.73-A/2002. The suit was finally decided by lower Court on 28/02/2004 whereby suit has been partly decreed. Against the said judgment and decree applicant preferred an appeal which has been registered as Civil Appeal No.12-A/2004. The appeal is pending and the appellate Court vide order dated 29/04/2004 has stayed the operation of the said decree.

3) During pendency of the suit, one of the landlords Nishidhkant Choudhary filed an application under Section 23-A of the Chhattisgarh Accommodation Control Act, 1961 (for short, "the Act) against the applicant for eviction on the ground

(88)

that he requires the suit house bona fide for his residential purpose. Applicant was served with a notice who, after service of the same, appeared before the Court and within time filed an application under Section 23- C of the Act supported with an affidavit, stating the grounds on which he seeks to contest the application for eviction. In his application, he raised the plea of promissory estoppel against the respondent, who in civil suit has pleaded that the house in question was not fit for living. He also raised an objection that suit accommodation was a joint property and without partition, respondent alone has no right to claim it for his bona fide need. During pendency of the civil suit for eviction, the application under Section 23-A of the Act for eviction has been filed and also raised other grounds as would disentitle the landlord to obtain possession. Although the application was opposed by the respondent, but he did not file any counter affidavit to controvert the affidavit filed by the applicant. Learned Court below by a combined impugned order, dis-allowed the application filed by the applicant for leave to contest and allowed the application filed by the respondent for eviction.

(89)

4) Respondent and his brother in their suit pleaded that the suit accommodation is not fit for human habitation, the impact of this admission has not been considered by the Authority. The availability of another accommodation as averred by the applicant has been repelled. The ground that applicant has entered into an agreement to purchase the suit house has also been repelled on the ground that it is fictitious and baseless. Applicant has filed an affidavit to support his averments which was not controverted by the respondent, therefore, it was incumbent upon the Authority to consider all the facts objectively.

5) Section 23 C(2) of the Chhattisgarh Accommodation Control Act, 1961 reads as below :

> *"The Rent Controlling Authority shall, within one month of the date of receipt of the application, give to the tenant, if necessary, leave to contest the application, if the application supported by an affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the*

(90)

accommodation on the ground specified in Section 23-A"

6) From bare reading of the aforesaid provision, it is clear that if an application supported by an affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order of the accommodation on the ground specified in Section 23-A of the Act, the Authority shall permit the tenant to contest the case. Here, in the instant case, landlord himself in another suit has pleaded that the suit accommodation is not fit for human living. Applicant/Tenant has disclosed a number of facts like availability of another suitable accommodation, the property being joint family property and without partition application under Section 23-A of the Act, is not maintainable, he has entered into a contract to purchase the suit accommodation, and all these facts, prima facie, if proved may be grounds to disentitle the landlord from obtaining an order for the recovery of possession. Learned Court below, without minutely considering the legal impact, only on the conjunctures and surmises, rejected the application and refused the tenant to contest the suit. Therefore, the order is erroneous, without jurisdiction and is required to be interfered.

(91)

7) In the result, the application filed by the applicant / tenant for leave to contest is allowed. The impugned combined order passed by the Rent Controlling Authority is set aside and the case is remanded back to the authority for disposal of the same in accordance with law, with a direction that the Authority shall expedite disposal of this case, preferably within three months from 26th October, 2005.

8) Both the parties are directed to appear before the Rent Controlling Authority, Durg on 26th October 2005

Sd/-
V.K.Shrivastava
Judge

27/09/2005

padma